

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Public Health Service
Health Services Administration
Indian Health Service
Rockville, Maryland 20857

INDIAN HEALTH SERVICE CIRCULAR NO. 82-7

CONTRACT PROPOSAL DECLINATION APPEALS BOARD
OPERATING PROCEDURES

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1. PURPOSE. This Circular establishes operating procedures for the Pub. L. 93-638 Contract Proposal Declination Appeals Board (CPDAB) created under authority of 42 CFR 36.214.
2. POLICY. The CPDAB represents the Director of the Indian Health Service (IHS) The purpose of the CPDAB is to consider the written appeal filed by a tribal organization which has received a Declination Notice from the IHS indicating that the tribal organization's Indian Self-Determination Contract Proposal has been disapproved. The CPDAB does not make a final determination but does recommend a decision to the Director or his representative.
- ?- HEARINGS. The regulations specify that the tribe or tribal organization has 30 days after receipt of a Declination Notice to file a written appeal with the CPDAB At which time it may request a formal or an informal hearing. When an informal hearing is selected, the appellant

may waive the right to appear and may submit instead a written appeal. In all cases, the request for a hearing should state the basis for the appeal by refuting the factors upon which the declination was based. Unless otherwise agreed upon, hearings will be conducted within 30 days of the CPDAB's receipt of the written request for hearing.

4. LOCATION. Hearings will generally be held at the Indian Health Service Headquarters in Rockville, Maryland, but may be held in the Area/Program Office which serves the appellant or at some other location if mutually agreed upon. If the hearing is more than 50 miles from the office of the appellant, the IHS, upon application of the appellant to the CPDAB Chairman, will authorize payment of transportation costs and per diem to allow adequate representation of the appellant.

If it is decided to hold the hearing at some location other than Rockville, Maryland, the CPDAB Chairman shall contact the Area/Program Director involved. In such cases, it will be the Area/Program Director's responsibility to assure that an appropriate forum is available and to provide any other preparation and support services needed for the CPDAB to conduct the hearing. When the hearing is held at Indian Health Service Headquarters the Chairman, CPDAB will be responsible for assuring logistical support.

5. CPDAB MEMBERS. Exhibit 1 is the Federal Register notice designating the membership of the CPDAB. If an informal hearing is requested, the CPDAB Chairman may, at his discretion, designate one or more members to hold the hearing. When more than one member is designated by the Chairman, the Chairman shall also designate which CPDAB member shall be the presiding officer. When the full CPDAB meets, the Chairman of the CPDAB shall normally be the presiding officer unless the Chairman has otherwise designated. CPDAB members shall disqualify themselves in any case in which they have participated in the declination decision.
6. PARTIES. The parties to the hearing are the tribe or tribal organization appealing the declination and the Indian Health Service Area or Program Office or headquarters component which declined the contract. Each party will designate in advance to the CPDAB a principal representative to present its case.
7. RECORD. The record shall consist of all documents in IHS files upon the declination was based (including internal working memorandums and recommendations), all documents submitted by the appellant to the CPDAB (including the written appeal where this mode is selected), all documents submitted by IHS to the CPDAB, transcripts or recordings of the hearing, any hearing report, and the CPOAD's recommendation (including dissenting views).
8. RESPONSIBILITIES. Once the CPDAB has been notified of an appeal, it is the responsibility of the CPDAB Chairman to decide upon the best date and

location for the hearing and to so notify the parties. It is the responsibility of the IHS principal representative to explain and defend the declination and to assure that all documents upon which the declination was based (including internal working memorandums and recommendations) are complete and submitted to the CPDAB and made available to the appellant.

9. NOTICE OF HEARING. The CPDAB Chairman shall notify the parties and the Indian tribe or tribes affected of the date, time, place and purpose of the hearing. The notice shall be by registered mail-, return receipt requested. In the case of a formal hearing the appellant will also be notified of the rights provided in 42 CFR 36.214(c)(1) through (6). (See Exhibit 2 for 42 CFR 36.214)
10. INFORMAL HEARING. An informal hearing may be held under such rules as may be but generally does not call for the taking of sworn testimony and may be likened to a conference conducted in an orderly fashion by the presiding officer. The hearing may be recorded (either by transcription or on tape) but if not recorded the presiding officer should assure that accurate notes of the proceedings are taken and that the notes identify all witnesses and persons representing the parties by name, title, and organization. Upon the applicant's request, and after the end of the hearing, a transcript of such record shall be furnished at the expense of IHS. The presiding officer of an informal hearing shall transmit a written hearing report, including all additions to the record resulting from the hearing, to the full CPDAB and to each of the parties who shall have 10 calendar days from receipt to submit any comments on the hearing report to the full CPDAB. The full CPDAB will then make its recommendation based on the record as it then exists.
11. FORMAL HEARING. A formal hearing 'is held before the full CPDAB. Testimony shall be given under oath administered by an officer legally' authorized to administer oaths. A record of the proceedings of the hearing shall be made by the CPDAB. Upon the appellant's request, and after the end of the hearing, a transcript of such record shall be furnished at the expense of the IHS. At least 10 days before the hearing the appellant must provide the CPDAB a list of any IHS employees it requires to be present at the hearing or whose deposition the appellant requires.
12. EVIDENCE. Evidence may be received at the hearing even though inadmissible under rules of evidence applicable to court procedure. The weight to be attached to evidence and testimony will be within the discretion of the CPDAB in making its recommendation and within the discretion of the Director or his representative in making a decision, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing.

13. FORM AND PROCEDURE. All hearings shall be opened to- the parties and such other persons and members of the public as the presiding officer deems consistent with the orderly and efficient conduct of the hearing, The presiding officer may designate counsel to advise board members during the hearing.

The presiding officer and CPDAE members shall inquire fully into the matters at issue. The presiding officer shall accept as evidence the testimony of witnesses and any documents which are relevant and material to such matters, The parties shall be provided an opportunity to enter any objections to the inclusion of any document or the presentation of oral testimony.

Each party shall present its case in an orderly manner and may cross examine witnesses of the other party.

The hearing should be opened with the presiding officer stating for the record the subject matter of the hearing, indicating generally the basis for the declination, and identifying the parties and their respective principal representatives and other attending representatives by name, title and organization. Witnesses will likewise be identified when called.

The IHS party will then present its case followed by the appellant. This order may be reversed or modified by the presiding officer. Each party may present its case in whatever manner it deems appropriate subject to the control of the presiding officer.


The order in which evidence and testimony shall be presented and the procedure at the hearing, except as this circular otherwise expressly provides, shall be at the discretion of the presiding officer and be of such a nature as to afford the parties a proper hearing. When it appears to be in the interest of obtaining a full and thorough review of all relevant issues, the presiding officer may adjourn the hearing to a future date and/or may order that the record be left open for a specified time to permit the parties to submit additional documents or comments.

14. RECOMMENATION. Based on the record, the CPDAS will make a written recommendation to the Director of the Indian Health Service or his representative. If the CPDAB recommendation is not unanimous, the minority may submit their views along with the WDADts recommendation. The Director or his representative shall make a written decision within 15 calendar days from the day the Director" or his representative, receives the CPDAB's recommendation. The CPDAB.s recommendation, any dissenting views and the Director's decision shall cite pertinent authority and shall include findings on all the matters at issue at the hearing. This decision shall constitute final administrative action on the appeal.

After the decision of the Director or his representative, the CPDAB Chairman shall provide a copy of the decision and the CPDAB

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recommendation (along with any dissenting views) to all parties to the hearing and to the Indian tribe or tribes affected.


Everett R. Rhoades, M.D.
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Director, Indian Health Service

Attachments:

Exhibit 1 - Federal Register **notice**

Exhibit 2 - 42 CFR 36.214